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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BRIAN IRELAND, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

CEREBRAL INC.,

Defendant.

Case No. \_\_\_\_\_

CLASS ACTION

**CLASS ACTION COMPLAINT**

Plaintiff Brian Ireland, individually and on behalf of all others similarly situated, complains and alleges as follows based on personal knowledge as to himself, on the investigation of his counsel, and on information and belief as to all other matters. Plaintiff believes that substantial evidentiary support exists for the allegations set forth in this complaint, and that a reasonable opportunity for discovery will reveal such evidence.

**NATURE OF ACTION**

1. Plaintiff brings this Class Action Complaint for legal and equitable remedies resulting from the illegal actions of Cerebral Inc. (“Defendant”) in sending automated text message advertisements to his cellular telephone and the cellular

CLASS ACTION COMPLAINT

Civil Case No.: \_\_\_\_\_

1 telephones of numerous other individuals across the country, in clear violation of the  
2 Telephone Consumer Protection Act, 47 U.S.C. § 227 (“TCPA”).

### 3 JURISDICTION AND VENUE

4 2. The Court has subject-matter jurisdiction over this action pursuant to 28  
5 U.S.C. § 1331 and 47 U.S.C. § 227.

6 3. Personal jurisdiction and venue are proper because Defendant maintains  
7 its corporate headquarters in this District.

### 8 PARTIES

9 4. Plaintiff is an individual and a “person” as defined by 47 U.S.C. § 153(39).  
10 Plaintiff is a resident and citizen of Orlando, Florida.

11 5. Defendant Cerebral Inc. is a e-commerce company that offers consumers  
12 online medication and care management services for anxiety and depression.  
13 Defendant is organized and incorporated under the laws of Delaware and maintains its  
14 corporate headquarters in San Francisco, California. Defendant is a “person” as  
15 defined by 47 U.S.C. § 153(39).

### 16 THE TELEPHONE CONSUMER PROTECTION ACT OF 1991

17 6. In 1991, faced with a national outcry over the volume of robocalls being  
18 received by American consumers, Congress enacted the TCPA to address certain abuse  
19 telecommunications practices.

20 7. The TCPA prohibits, *inter alia*, making any telephone call to a cellular  
21 telephone using a “prerecorded or artificial voice” or an “automatic telephone dialing  
22 system” (“ATDS” or “autodialer”) absent an emergency purpose or the “express  
23 consent” of the party called. The TCPA further provides that any text message  
24

1 constituting an “advertisement” or “telemarketing” message within the meaning of the  
2 TCPA requires the sender to acquire the recipient’s “prior express written consent”  
3 before initiating such a message via an autodialer.

4 8. According to findings by the Federal Communication Commission  
5 (“FCC”), which is vested with authority to issue regulations implementing the TCPA,  
6 autodialed calls and text messages are prohibited because receiving them is a greater  
7 nuisance and more invasive than receiving live or manually dialed telephone  
8 solicitations. The FCC also recognized that wireless customers are charged for such  
9 incoming calls and texts whether they pay in advance or after the minutes are used.  
10 Moreover, because cellular telephones are carried on their owners’ persons, unsolicited  
11 calls and texts transmitted to such devices via an autodialer are distracting and  
12 aggravating to their recipients and intrude upon their recipients’ seclusion.

13 9. To state a cause of action for violation of the TCPA, a plaintiff need only  
14 set forth allegations demonstrating that the defendant “called a number assigned to a  
15 cellular telephone service using an automatic dialing system or prerecorded voice.”  
16 *Breslow v. Wells Fargo Bank, N.A.*, 857 F. Supp. 2d 1316, 1319 (S.D. Fla. 2012), *aff’d*,  
17 755 F.3d 1265 (11th Cir. 2014).

#### 18 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

19 10. Plaintiff was at all times mentioned herein the subscriber or customary  
20 user of the cellular telephone number (407) \*\*\*-7707 (the “7707 Number”). The 7707  
21 Number is, and at all times mentioned herein was, assigned to a cellular telephone  
22 service as specified in 47 U.S.C. § 227(b)(1)(A)(iii).

11. During the preceding four years, Defendant transmitted, by itself or through an intermediary or intermediaries, multiple text messages to Plaintiff's 7707 Number and at least one text message (that was identical to or substantially the same as those received by Plaintiff) to each member of the putative Class. All of the subject text messages sent to Plaintiff and the members of the putative Class constituted "advertisements" or "telemarketing" messages within the meaning of the TCPA and its implementing regulations because each such message was aimed at promoting the commercial availability of Defendant's products and services and ultimately selling such products and services. Defendant offered such products and services for sale to Plaintiff and the members of the putative class for the purpose of deriving commercial profit from the purchase of any such products or services ultimately made by the consumers to whom the subject text messages were directed.

12. All of the subject text messages received by Plaintiff and the members of the putative Class were transmitted by or on behalf of Defendant without the requisite prior "express written consent" of Plaintiff or any member of the putative Class.

13. For example, on or about January 22, 2020, Defendant transmitted or caused to be transmitted, by itself or through an intermediary or intermediaries, and without Plaintiff's prior "express written consent," a text message to the 7707 Number that stated as follows:

Keep going to start your first month of Cerebral care for only  
\$5. <https://www.getcerebral.com>

The link in the above-depicted text message redirected to a website operated and maintained by or on behalf of Defendant, where Defendant sells its products and services to consumers for commercial profit.

1        14. Each unsolicited text message sent by or on behalf of Defendant to  
2 Plaintiff's 7707 Number originated from the telephone number (415) 304-8290, which  
3 is a dedicated telephone number leased or owned by or on behalf of Defendant that  
4 Defendant uses to transmit text messages to consumers *en masse*, in an automated  
5 fashion and without human intervention.

6        15. Because Plaintiff's cellular phone alerts him whenever he receives a text  
7 message, each unsolicited text message transmitted by or on behalf of Defendant to  
8 Plaintiff's 7707 Number invaded Plaintiff's privacy and intruded upon Plaintiff's  
9 seclusion upon receipt.

10       16. All telephone contact by Defendant or affiliates, subsidiaries, or agents of  
11 Defendant to Plaintiff's 7707 Number and to the numbers belonging to the unnamed  
12 Class members occurred using an "automatic telephone dialing system" as defined by  
13 47 U.S.C. § 227(b)(1)(A). Specifically, Defendant utilized an "automatic telephone  
14 dialing system" because all such text messages were sent from a dedicated telephone  
15 number used for the exclusive purpose of transmitting text messages to consumers *en*  
16 *masse*; because the subject text messages contained the same or substantially the same  
17 generic, pro forma content; because the dialing equipment utilized by or on behalf of  
18 Defendant to send such messages includes features substantially similar to a predictive  
19 dialer, inasmuch as it is capable of making or initiating numerous calls or texts  
20 simultaneously (all without human intervention); and because the hardware and  
21 software used by or on behalf of Defendant to make or initiate such messages have the  
22 capacity to store, produce, and dial random or sequential numbers, and to receive and  
23  
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1 store lists of telephone numbers, and to then dial such numbers, *en masse*, in an  
2 automated fashion without human intervention.

3 17. And indeed, Defendant actually transmitted the text messages at issue in  
4 this case to Plaintiff and all other putative Class members in an automated fashion and  
5 without human intervention, with hardware and software that received and stored  
6 telephone numbers and then automatically dialed such numbers.

7 18. Neither Plaintiff, nor any other member of the putative Class, provided  
8 their prior “express written consent” to Defendant or any affiliate, subsidiary, or agent  
9 of Defendant to transmit the subject text message advertisements to the 7707 Number  
10 or to any other Class member’s cellular telephone number by means of an “automatic  
11 telephone dialing system” within the meaning of 47 U.S.C. § 227(b)(1)(A).

12 19. None of Defendant’s text messages to the 7707 Number or to any putative  
13 Class member’s cellular telephone number was sent for an emergency purpose.

#### 14 **CLASS ALLEGATIONS**

15 20. Class Definition. Plaintiff brings this civil class action on behalf of himself  
16 individually and on behalf of all other similarly situated persons as a class action  
17 pursuant to Federal Rule of Civil Procedure 23. The “Class” which Plaintiff seeks to  
18 represent is comprised of and defined as follows:

19 All persons in the United States who, at any time between the  
20 four years preceding the filing of this action and the present:

21 (1) subscribed to a cellular telephone service;

22 (2) received, at the telephone number assigned to such  
23 service, at least one text message sent by or on behalf of  
24 Defendant using the same or substantially the same  
dialing technology that Defendant used to transmit the  
subject text messages to Plaintiff; and

(3) for whom Defendant lacks any record establishing the person's provision of "express written consent" to receive such message(s) prior to the initiation of such message(s).

21. Excluded from the class are Defendant, its officers and directors, members of the immediate families of the foregoing, legal representatives, heirs, successors, or assigns of the foregoing, and any entity in which Defendant has a controlling interest.

22. Plaintiff reserves the right to modify the definition of the Class (or add one or more subclasses) after further discovery.

23. Plaintiff and all Class members have been impacted and harmed by the acts of Defendant or its affiliates, agents, or subsidiaries acting on its behalf.

24. This Class Action Complaint seeks injunctive relief and monetary damages.

25. Defendant or any affiliates, subsidiaries, or agents of Defendant have acted on grounds generally applicable to the Class, thereby making final injunctive relief and corresponding declaratory relief with respect to the Class as a whole appropriate. Moreover, on information and belief, Plaintiff alleges that the TCPA violations complained of herein are substantially likely to continue in the future if an injunction is not entered.

26. This action may properly be brought and maintained as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b). This class action satisfies the numerosity, typicality, adequacy, commonality, predominance, and superiority requirements.

1        27. On application by Plaintiff's counsel for class certification, Plaintiff may  
2 also seek certification of subclasses in the interests of manageability, justice, or judicial  
3 economy.

4        28. Numerosity. The number of persons within the Class is substantial,  
5 believed to amount to thousands of persons dispersed throughout the United States. It  
6 is, therefore, impractical to join each member of the Class as a named plaintiff. Further,  
7 the size and relatively modest value of the claims of the individual members of the  
8 Class renders joinder impractical. Accordingly, utilization of the class action  
9 mechanism is the most economically feasible means of determining and adjudicating  
10 the merits of this litigation.

11        29. Typicality. Plaintiff received at least one text message from Defendant  
12 that originated from the telephone number (415) 304-8290, and Defendant lacks any  
13 record establishing Plaintiff's prior "express written consent" to receive any such  
14 messages within the meaning of the TCPA. Consequently, the claims of Plaintiff are  
15 typical of the claims of the members of the Class, and Plaintiff's interests are consistent  
16 with and not antagonistic to those of the other Class members he seeks to represent.  
17 Plaintiff and all members of the Class have been impacted by, and face continuing harm  
18 arising out of, Defendant's TCPA-violative misconduct as alleged herein.

19        30. Adequacy. As the proposed Class representative, Plaintiff has no interests  
20 adverse to or which conflict with the interests of the absent members of the Class, and  
21 he is able to fairly and adequately represent and protect the interests of such a Class.  
22 Plaintiff has raised viable statutory claims of the type reasonably expected to be raised  
23 by members of the Class and will vigorously pursue these claims. If necessary as the  
24



litigation (including discovery) progresses, Plaintiff may seek leave to amend this Class Action Complaint to modify the Class definition set forth above, add additional Class representatives, or assert additional claims.

31. Competency of Class Counsel. Plaintiff has retained and is represented by experienced, qualified, and competent counsel committed to prosecuting this action. Plaintiff's counsel are experienced in handling complex class action claims, including in particular claims brought under the TCPA (as well as other consumer protection and data-privacy statutes).

32. Commonality and Predominance. There are well-defined common questions of fact and law that exist as to all members of the Class and predominate over any questions affecting only individual members of the Class. These common legal and factual questions, which do not vary from Class member to Class member and may be determined without reference to the individual circumstances of any Class member, include (but are not limited to) the following:

- a) Whether Defendant or affiliates, subsidiaries, or agents of Defendant sent text message advertisements to Plaintiff's and Class members' cellular telephones;
- b) Whether such text messages were sent using an "automatic telephone dialing system";
- c) Whether Defendant can meet its burden to show that it (or any disclosed affiliate, subsidiary, or agent of Defendant acting on its behalf) obtained prior "express written consent" within the meaning of the TCPA to

1 transmit the subject text messages to the recipients of such messages,  
2 assuming such an affirmative defense is timely raised;

3 d) Whether Defendant or any affiliates, subsidiaries, or agents of Defendant  
4 should be enjoined from engaging in such conduct in the future.

5 33. Superiority. A class action is superior to other available methods for the  
6 fair and efficient adjudication of this controversy because the prosecution of individual  
7 litigation on behalf of each Class member is impracticable. Even if every member of  
8 the Class could afford to pursue individual litigation, the court system could not;  
9 multiple trials of the same factual issues would magnify the delay and expense to all  
10 parties and the court system. Individualized litigation would also present the potential  
11 for varying, inconsistent or contradictory judgments. By contrast, the maintenance of  
12 this action as a class action, with respect to some or all of the issues presented herein,  
13 presents few management difficulties, conserves the resources of the parties and the  
14 court system and protects the rights of each member of the Class. Plaintiff anticipates  
15 no difficulty in the management of this action as a class action. Class wide relief is  
16 essential to compel compliance with the TCPA and thus protect consumers' privacy.  
17 The interests of Class members in individually controlling the prosecution of separate  
18 claims is small because the statutory damages recoverable in an individual action for  
19 violation of the TCPA are likewise relatively small. Management of these claims is  
20 likely to present significantly fewer difficulties than are presented in many class actions  
21 because the text messages at issue are all automated and because Defendant lacks any  
22 record reflecting that it obtained the requisite consent from any Class member to be  
23 sent such messages. Class members can be readily located and notified of this class  
24

1 action by reference to Defendant's records and, if necessary, the records of Defendant's  
2 affiliates, agents, or subsidiaries and cellular telephone providers.

3 34. Additionally, the prosecution of separate actions by individual Class  
4 members would create a risk of multiple adjudications with respect to them that would,  
5 as a practical matter, be dispositive of the interests of other members of the Class who  
6 are not parties to such adjudications, thereby substantially impairing or impeding the  
7 ability of such nonparty Class members to protect their interests. The prosecution of  
8 individual actions by Class members could also establish inconsistent results and/or  
9 establish incompatible standards of conduct for Defendant.

10 **CLAIM FOR RELIEF**  
11 **VIOLATION OF THE TELEPHONE**  
12 **CONSUMER PROTECTION ACT**  
13 **(47 U.S.C. § 227)**

14 35. Plaintiff incorporates by reference the foregoing paragraphs of this Class  
15 Action Complaint as if fully stated herein.

16 36. Plaintiff and each member of the Class received at least one text message  
17 sent by or on behalf of Defendant during the class period. All such messages sent to  
18 Plaintiff and the members of the proposed Class promoted the sale of Defendant's  
19 goods or services or the commercial availability of goods or services sold by  
20 Defendant; consequently, all such messages constituted "advertising" or  
21 "telemarketing" material within the meaning of the TCPA and its implementing  
22 regulations. Additionally, all such messages were sent via the same dialing technology,  
23 which qualified as an ATDS within the meaning of the TCPA, as evidenced by the  
24 generic nature of the text messages, the use of a dedicated telephone number to transmit

1 each such message, and the capacities, capabilities, and features of the dialing  
2 technology at issue, as alleged above.

3 37. Neither Plaintiff nor any other member of the Class provided Defendant  
4 his or her prior “express written consent” within the meaning of the TCPA to receive  
5 the autodialed text message advertisements at issue in this case.

6 38. Defendant’s use of an ATDS to transmit the subject text message  
7 advertisements to telephone numbers assigned to a cellular telephone service, including  
8 to Plaintiff’s 7707 Number and the numbers of all members of the proposed Class,  
9 absent the requisite prior “express written consent,” as set forth above, constituted  
10 violations of the TCPA by Defendant, including but not limited to violations of 47  
11 U.S.C. § 227(b)(1)(A)(iii).

12 39. Plaintiff and all Class members are entitled to, and do seek, an award of  
13 \$500.00 in statutory damages for each such violation of the TCPA committed by or on  
14 behalf of Defendant (or \$1,500.00 for any such violations committed willfully or  
15 knowingly) pursuant to 47 U.S.C. § 227(b)(3).

16 40. Plaintiff, individually and on behalf of the putative Class, seeks an award  
17 of attorneys’ fees and costs to Plaintiff’s counsel pursuant to Federal Rule of Civil  
18 Procedure 23.

19 **PRAYER FOR RELIEF**

20 **WHEREFORE**, Plaintiff Brian Ireland prays for relief and judgment in favor  
21 of himself and the Class as follows:

22 A. Injunctive relief sufficient to ensure Defendant refrains from violating the  
23 TCPA in the future;  
24

B. Statutory damages of \$500.00 for himself and each Class member for each of Defendant's violations of 47 U.S.C. § 227(b)(1) (or \$1,500.00 for each such violation to the extent committed willfully or knowingly);

C. An Order certifying this action to be a proper class action pursuant to Federal Rule of Civil Procedure 23, establishing an appropriate Class and any Subclass(es) the Court deems appropriate, finding that Plaintiff is a proper representative of the Class, and appointing the attorneys representing Plaintiff as counsel for the Class; and

D. An award of attorneys' fees and costs to Plaintiff's counsel, payable from any class-wide damages recovered by the Class, pursuant to Federal Rule of Civil Procedure 23.

### DEMAND FOR JURY TRIAL

On behalf of himself and all others similarly situated, Plaintiff demands a trial by jury pursuant to Federal Rule of Civil Procedure 38(b) on all claims and issues so triable.

Dated: February 2, 2020

**HEDIN HALL LLP**

By: /s/ Frank S. Hedin  
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